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From: marks@landstewardshipproject.org
Sent: Tuesday, October 05, 2004 4:27 PM
To: FarmBillRules
Subject: comment on CSP interim final rule
Attachments: ATTACHMENT.TXT; LSP comments on CSP IFR Oct 04.doc

Please find comments and recommendations regarding the interim final rule for the Conservation Security Program attached. Please let me know if there is any problem with this email. Thank you.

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Land Stewardship Project
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COMMENTS AND RECOMMENDATIONS
Regarding the Interim Final Rule for the Conservation Security Program
(7 CFR Part 1469)
Federal Register, June 21, 2004
(Fed. Reg. Vol. 69, No 118, pages 34501-34532)

October 5, 2004

Mr. Craig Derickson
Financial Assistance Program Assistance Division
Natural Resources Conservation Service
P.O. Box 2890
Washington, DC 20013-2890
USDA - Natural Resources Conservation Service

VIA EMAIL

The Land Stewardship Project (LSP) is a nationally known farm and environmental organization whose mission is to promote an ethic of stewardship of our nation's farmlands. LSP has been actively engaged in the development of the Conservation Security Program (CSP) since 1999. Our Federal Farm Policy Committee, made up of farmer members of LSP, has testified on behalf of LSP in Congressional hearings, spoken at USDA listening sessions and public meetings, participated in ground-breaking research on new approaches to farm and conservation policy, and developed comments for the CSP Proposed Rule. Our close connection to farmers and people working on the land gives us insight to farmers' and ranchers' perspectives of the greatly anticipated Conservation Security Program.

On behalf of the over 2,000 families who are members of LSP, we are submitting the following comments for the Interim Final Rule on Conservation Security Program.

The Conservation Security Program (CSP) passed in the 2002 Farm Bill is a significant shift in our nation's approach to protecting our nation's natural resources and restoring efficiency and equity to America agriculture. A program established for working farmland and working farmers, CSP should recognize and reward actual conservation benefits produced by farmers and ranchers, which in turn also provides incentives for farmers and ranchers to address and solve critical resource problems, producing tangible benefits to the public at large and our nation's lands.

Yet, as LSP has evaluated the 2004 sign-up and Interim Final Rule we have grave concerns with the NRCS's approach and implementation of CSP. Significant changes are needed to the Interim Final Rule (IFR) in order for CSP to make a major positive impact towards excellent conservation on working farmlands across America.

First of all, we request an extension of the comment period for the IFR. An additional 60 days are needed for the public comment period in order to allow the time necessary for an adequate evaluation of the CSP's first sign-up by the NRCS and other concerned parties. We have been told that much of the information on the results of the first sign-up was embargoed and would be put onto NRCS state websites as it became available. On September 28, we found that information about the results of the first CSP sign-up had been posted on only a few websites. In the announcement of the public comment period for the CSP IFR, NRCS asked for responses to numerous issues related to the first CSP sign-up but now we find that NRCS has not released information to the public in the timely fashion necessary for fully informed public comment. Most farmers and ranchers are heavily engaged with their operations in late summer and early fall and will have little opportunity, until later in the autumn, to prepare their own comments or provide information for a thorough review of CSP implementation from the most important perspective, that of farmers and ranchers who are already undertaking good conservation work on their operations or seeking to make significant improvements.

The Land Stewardship Project recommends the following improvements that the NRCS should make to the Interim Final Rule for the Conservation Security Program:

1. **CSP should be a nationwide entitlement program available to all farmers who qualify regardless of where they reside.** CSP should be nationwide, without geographical restrictions. Participation in CSP should not be limited to particular watersheds. Remove the restrictions that now limits enrollment to only a few watersheds and certain categories of farmers and ranchers. The intent of the 2002 law was a fully funded national entitlement program available to all farmers. CSP was passed as an uncapped conservation program and the NRCS rules need to reflect that goal of Congress.
2. **Implement CSP on a continuous sign-up schedule, so that farmers don't have to wait 8 years to apply for CSP if they didn't get in the first time.** A continuous sign-up would stimulate conservation and stewardship on working farmland and allow CSP payments to function as powerful incentives to farmers to meet the environmental standards outlined in the quality criteria. It is necessary for fulfilling the purpose and the promise of CSP. In order to "reward the best and motivate the rest," USDA should institute continuous signup (or at least annual signup) for the program, wherever it is implemented. That way, if a producer is not yet eligible and finds out that he/she needs to do X or Y to get eligible, they have a powerful incentive to do so (CSP payments they would become eligible for as soon as they had accomplished the changes), as well as potential access to other programs (e.g., an appropriately used EQIP) to help them get there. The big problem is the selected watersheds on a proposed 8-year rotation -- we need continuous signup to allow well-intentioned farmers to make the needed improvements and then get into CSP to secure that conservation and make further changes for the good of the land. In contrast, USDA's proposed 8-year cycle for sign-up is actually counterproductive to providing incentives for

farmers and ranchers to implement and/or maintain effective conservation on their land and achieve enrollment in the program. Under the IFR, if a farmer or rancher does not meet quality criteria, for whatever reason, the next available chance for sign-up is 8 years later. This provides little or no motivation to make changes to meet the well-established quality criteria. Continuous sign-up is necessary for fulfilling the purpose and the promise of CSP and gives farmers and ranchers more flexibility to accessing the program.

In the case of a funding cap on any subsequent CSP sign-ups, we advise that all new watersheds selected are under continuous sign-up. Selecting fewer watersheds with continuous sign-up is superior to many watersheds on an 8 year sign-up cycle.

3. **Eliminate the newly implemented regulatory cap or “per acre” limitation on contracts.** This cap discriminates against farmers on smaller acreages who are doing highly effective conservation management and favors large operators who can get higher overall payments for doing less on more acres. This cap unfairly makes the enhancement payment options less viable for farmers who want to practice more conservation on their land. In the CSP IFR, NRCS inserted a provision that imposes a cap on the combined stewardship, existing practice, and enhancement payments based on a percentage of the acreage rental rate times the total number of acres enrolled in the CSP. IFR § 1469.23(e)(5). Because the cap is based on a percentage of the acreage’s rental rate, the cap also allows higher payments to farmers and ranchers with higher rental rates, even if farmers and ranchers with lower rental rates are willing to do much more conservation work on their land.

This arbitrary limitation on all combined CSP payments is contrary to the CSP statutory authority on payment limitations. Nowhere does the CSP provide for a total per acre payment limitation based on a percentage of acreage rental rate and total number of acres enrolled in the CSP that discriminates against agricultural operations based on their size. In applying this limit to enhanced payments, the limitation directly contradicts the statutory provision that enhanced payments be determined in a manner that “*ensures equity across regions of the nation.*”¹ The per acre formula clearly discriminates among regions, giving farms and ranches in areas with higher rental rates and higher average acreage the potential for much higher enhanced payments. In addition, there is no provision in the statute for basing enhanced payments on per acre rental rates. There is also no statutory authority for imposing on cost-share payments a discriminatory limit based on the rental rate times the number of acres. Only the base payment provides for a payment based on rental rates and number of acres.

By including this “per acre” cap on all combined CSP payments, NRCS has arbitrarily contradicted the carefully crafted legislative balance among the different types of CSP payments, which was intended to ensure balance and

¹ 7 U.S.C. § 3838c(b)(1)(C)(iii).

greater equity between larger operators doing relatively little conservation work on many acres in relation to small and mid-sized farmers and ranchers doing much more comprehensive conservation on large numbers of smaller acreages. With its “per acre” cap, NRCS ensures that greater amounts of conservation money will flow to larger operations on more expensive land doing less to provide the public with comprehensive conservation benefits.

4. **Implement the CSP to clearly require that the direct attribution requirement is met and payment limitations are recognized.** The law requires direct attribution of CSP payments back to the individual or entity. CSP payments are attributed directly to real persons regardless of the type or number of business entities, farms, locations, or any other factor. The intent of Congress is clear that whichever tier a producer will fit within, there are specific payment limitations they cannot exceed. After extensive debate, the CSP was passed by Congress and signed by the President with strong limits on the payments any one producer can receive from the program -- \$20,000 (of which not more than \$5,000 may consist of base payments) for those enrolled at Tier 1, \$35,000 (of which not more than \$10,500 may consist of base payments) for those enrolled at Tier 2, and \$45,000 (of which not more than \$13,500 may consist of base payments) for those enrolled at Tier 3.
5. **The CSP rule should be modified by removing all references to limiting enrollment opportunities to certain “categories” of producers.** The CSP should be a nationwide program available to all types of producers in all regions of the country who are practicing effective conservation and solving various combinations of critical resource concerns and conservation objectives, as provided for in the 2002 Farm Bill. The CSP IFR limits CSP eligibility to particular, unspecified “categories” and “subcategories” of farmers and ranchers. IFR § 1469.6(b). This limitation is unsupported by the clear language of the statute. Eligible producers are clearly defined by the law, and to participate in the CSP, eligible producers must meet the statutory requirements of the program, including the minimum requirements for each tier determined and approved by the Secretary.² The Secretary has the authority to set reasonable environmental thresholds for participation in each tier but does not have the authority to make otherwise eligible producers ineligible based on selection categories unrelated to the tiers.
6. **Increase the base payment rates to levels outlined in the 2002 Farm Bill.** The change in the base payments (or “stewardship payments”) between the Proposed CSP Rule and the IFR was an improvement, but needs to be increased to 2002 Farm Bill levels. The “stewardship payments” being offered by NRCS do not reward existing conservation adequately, and fail to provide enough of an incentive for further improvements in stewardship and enrollment in the program. Increasing the base payments will provide a realistic option for farmers looking to

² 16 U.S.C. § 3838a(d)(6)

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shift from the pattern of maximum production of commodity crops subsidized by the commodity programs and into more conservation-minded farming methods.

7. **Expand enhancement payments to include the full range of options in the law**, including resource conserving crop rotations, rotational grazing, organic farming, conservation and regeneration of plant and animal germplasm, native prairie restoration, and recognition of farmers with limited or no use of pesticides and commercial fertilizer. Continue enhancement payments for on-farm/ranch research and demonstration activities and for on-farm/ranch assessment and evaluation activities.
8. **Amend the regulatory definition of the term “resource-conserving crops” to correspond precisely with the statutory definition and issue immediate guidance to the states on how to incorporate resource-conserving crop rotation into the Field Office Technical Guides so that payments can be made to CSP participants.** The law defines a “resource-conserving crop rotation” as a “a crop rotation that—

“(A) includes at least 1 resource-conserving crop (as defined by the Secretary);
“(B) reduces erosion;
“(C) improves soil fertility and tilth;
“(D) interrupts pest cycles; and
“(E) in applicable areas, reduces depletion of soil moisture (or otherwise reduces the need for irrigation).”³

Unfortunately, the CSP IFR changes this statutory definition because of imprecise regulatory drafting. In the IFR, the regulatory definition takes the decisive “and” connecting the items in the list and converts it to an “or” which has the effect of greatly weakening the definition. In addition, the rule adds “maintains or” prior to the words “improve soil fertility and tilth.” IFR § 1469.3. We urge NRCS to define the term “resource-conserving crop rotation” in the CSP rule using the statutory wording.

We also appreciate the addition of most of the language recommended by SAC to the definition of resource-conserving crop rotation to make the provision operational by providing specific examples of resource-conserving crops. We note, however that two provisions which we recommended were omitted from the provision. We recommend that you add at the end of the following of the definition of “resource-conserving crops” the following:

“a winter annual oilseed crop which provides soil protection; and
“such other plantings, including non-traditional crops with substantially reduced water use needs, as the Secretary considers appropriate for a particular area.”

³ 16 U.S.C. § 3838 “resource-conserving crop rotation”

We urge you to adopt this more complete and corrected definition for resource-conserving crop and resource conserving crop rotations as part of the program rule. Getting this definition right, and ensuring it is incorporated into program implementation at all the appropriate points, is very important to the program's success in facilitating sustainable conservation systems improvements. We also urge you to make the necessary and appropriate revisions to the conservation practice standard for conservation crop rotation to accommodate the resource-conserving crop rotation and resource-conserving crop definitions and corollary considerations.

9. **Restore the 15% additional cost share for beginning farmers and ranchers to the cost-share payment rate for new practices.** The IFR did not include a 15% bonus for cost-share payments provided to beginning farmers and ranchers. Establish in the CSP rule a 15% bonus for cost-share payments to beginning farmers and ranchers to ensure that they can plan for and implement sound conservation practices and systems into their operations.
10. **Continue to recognize "pastured-cropland" as a land use that is classified in and receives the same payment rates as cropland.** This was a good change made by the NRCS in responding to comments on the initial proposed rule for CSP. The NRCS was right to address this problem by adding a new definition in the CSP IFR for "Pastured cropland" to mean a land cover/use category that includes areas used for the production of pasture in grass-based livestock production systems that could support adapted crops for harvest, and for providing in the definition that pastured cropland will receive the same stewardship (base) payments as cropland. We continue to urge NRCS to go further by providing that base payments be based on land capability classes rather than current land use.
11. **Include in the CSP rule a provision that expressly implements the statutory provisions for CSP contract renewal.** We note that in the CSP IFR, NRCS has removed a provision included in the CSP proposed rule that would have given the NRCS Chief the discretion to determine if a CSP contract would be renewed. While that is a slight improvement, the CSP IFR continues the failure of NRCS to provide a clear regulatory provision for contract renewal in keeping with the CSP statute. One of the major policy innovations of the CSP is to offer incentives to producers to *maintain* environmentally-friendly production systems for the long term. The CSP IFR ignores the clear requirement of the law and would effectively gut the CSP as a "green payments" program, if farmers and ranchers do not have a renewal option after a single multi-year contract period.

The statute has a clear and simple provision on contract renewals, with one exception clause. The general rule is "*at the option of a producer, the conservation security contract of the producer may be renewed for an additional period of not less than 5 nor more than 10 years.*"⁴ The exception clause requires

⁴ 16 U.S.C. § 3838a(e)(4)(A)

any producer renewing a Tier 1 contract without moving to a higher tier to either add new conservation practices on land currently enrolled or to enroll anew portion of the farm and meet the eligibility criteria that pertain.⁵ Rather than putting a renewal provision into the CSP rule, NRCS now has a provision that reads “*Contracts expire on September 30 in the last year of the contract. A participant may apply for a new conservation stewardship contract in a subsequent signup.*” IFR § 146.21(g). The opportunity to apply for a new conservation stewardship contract, however, is not the same as the statutory guarantee that the holder of an existing CSP contract has a right to renew that contract. Indeed, if the NRCS continues with its idea to rotate eligibility among watersheds with no continuous signup, a CSP applicant may have to wait years for the opportunity to enter into a new contract.

12. **Revise the proposed definition of agricultural operation by deleting the words “and constituting a cohesive management unit,” and tighten the interface between the definition and the “one contract per agricultural operation” requirement.** NRCS should utilize a strict one-producer, one-contract approach to CSP contracts as a way to provide the fairest treatment of all producers and to guard against program fraud and abuse. Multiple contracts are not contemplated by the statute, are unnecessary, and would only serve to circumvent the clear intention of the payment limitation provision. Congress clearly intended to limit the funds flowing to each individual producer under CSP – even if they might do more for conservation with larger payments. The intent is to entice all farmers and ranchers to participate, but limit payments to a moderate amount per farmer or rancher per year. The program was not intended to pay for every last possible conservation practice and every last possible acre. To do so would not only run up the cost of the program substantially, but also risk the loss of public support and enthusiasm for the program, especially if large payments were to go to very large acreages with only minimal conservation measures established.

We therefore commend you for developing a unified definition for the term agricultural operation that incorporates all agricultural land, whether owned or leased, under the control of the participant who is providing active personal management (general supervision and services, whether performed on or off site) of the operation. This definition, taken with the provision in the CSP IFR for delineation of an agricultural operation by the applicant, IFR § 1469.5(d)(4), minimize the opportunity for strategic manipulation of the “agricultural operation” to obtain multiple CSP contracts in order to get multiple CSP payments. We also approve of the limitation of one CSP contract per application period.

We continue to urge NRCS, however, to delete from the definition the of the term “agricultural operation” and from the CSP provision delineation of an agricultural

⁵ 16 U.S.C. § 38383a(e)(4)(B)

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operation the words, “*and constituting a cohesive management unit*”⁶ as they could be construed as a potential loophole. Our concern in this respect was heightened by the comment made in the prefatory comments to the CSP proposed rule: “*NRCS’s definition of an agricultural operation encourages producers to submit a single contract for all eligible land, rather than separate contracts, to the extent such land represents a cohesive management unit.*” (*emphasis added*)⁷ That language seemed to openly invite abuse.

We urge you to drop the cohesive management unit language from the definition and to tie closely and uniformly to the one contract, one producer limit. With this deletion from the definition of agricultural operation, we would support the language of the CSP IFR in the contract requirements section limiting program participants to one contract per agricultural operation.⁸

Implemented properly, the CSP can provide farmers and ranchers with meaningful incentives and rewards and protect the nation’s soil, water, and future. Please make the changes outlined above for the good of our nation’s farmlands and farm communities.

Sincerely,

Mark Schultz
Policy Program Director
Land Stewardship Project

⁶ § 1469.3

⁷ 69 Fed. Reg. 206 (2004)

⁸ § 1469.21(b)